

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL AND  
REGULAR REDEVELOPMENT AGENCY MEETING  
MINUTES – FEBRUARY 21, 2007**

**CALL TO ORDER**

Mayor/Chairman Tate called the meeting to order at 6:05 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Grzan, Sellers, and Mayor/Chairman Tate  
Absent: Council/Agency Member Lee

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council Action***

**CLOSED SESSION:**

Mayor Tate announced the below listed closed session item.

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 1

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Tate opened the Closed Session item to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor Tate adjourned the meeting to Closed Session at 6:07 p.m.

**RECONVENE**

Mayor/Chairman Tate reconvened the meeting at 7:00 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Kern announced that no reportable action was taken on the above listed closed session item.

**SILENT INVOCATION**

## **PLEDGE OF ALLEGIANCE**

## **PROCLAMATIONS**

## **RECOGNITIONS**

## **CITY COUNCIL REPORT**

Mayor Tate indicated that he has been spending the bulk of his time working on his State of the City speech that he will be presenting next Monday night at the Community & Cultural Center. It was his hope that citizens would attend this event. He serves on the Public Safety & Community Services Committee that is chaired by Mayor Pro Tempore Carr. He indicated that this Committee has met a couple of times last week, and is diving into its workplan for the year. The Committee gave itself a goal of a short turn around to return to the Council with recommendations on safety services in the police area. The Committee has been working intently; working with the Police Department and City staff to make progress in this regard. He announced that the City has reinstituted its meetings with the Morgan Hill Unified School District. He stated that a meeting was held last Thursday; indicating that the City-School Liaison Committee will meet on a regular bi-monthly basis henceforth. He serves as chair to the Regional Planning & Transportation Committee. He noted that the Council has an item on this evening's Consent Calendar that talks about the Southeast Quadrant Study and the future work that will take place in terms of defining the urban limit line, the southeast quadrant and the greenbelt. He stated that this Committee has been designated as the committee that will interface with staff on this project, and guide it until such time that it is ready to come before the entire Council later in the year. He said that the work of these two committees will be very intense this year, and that he is looking forward to getting the work done.

## **CITY COUNCIL COMMITTEE REPORTS**

Council Member Sellers indicated that as part of the Council's workplan and goal setting session, it requested the Community & Economic Development Committee to look at the Granada Theater in terms of potential uses/acquisition. At its last meeting, this Committee decided that the City would be best served by conducting a separate workshop on the Granada Theater; recommending the workshop be held in March. He invited the community and individuals interested in this particular issue to attend the workshop. He addressed the Downtown Plan Update; indicating that this Committee determined that the best way to proceed with the update is to keep the Council Committee infrastructure. Further, that the Community & Economic Development Committee undertake the review of the document. He stated that he and Council Member Lee will be active on this Committee. He stated that the Committee will be bringing these two issues back, and/or keep the Council informed as the Committee moves forward.

Mayor Pro Tempore Carr noted that the Council adopted a goal for the downtown, agreed to invest Redevelopment Agency (RDA) funds, and that the Council/Redevelopment Agency established a dollar amount/timeframe to which these funds would be spent. He inquired whether the Community & Economic Development Committee established a timeline when it would return to the Council/Agency Board with an outline on what its work will be.

Council Member Sellers responded that the project addressed by Mayor Pro Tempore Carr is a separate project. He clarified that what he referred to earlier was specifically related to the Downtown Plan. He indicated that there has been review of some of the elements contained in the Downtown Plan as they relate to Measure F by the Planning Commission. He stated that the work on the Downtown Plan Update would occur through late this year (e.g., traffic study, parking, etc.). He indicated that the Committee plans to return with a recommendation on the investment of Redevelopment Agency funds in April 2007. He noted that staff has performed a lot of work on general categories, and that the Committee will refine the categories; recommending funding. Although the Downtown Plan Update may not be finalized until late this year, there may be some elements of the Plan that can be completed earlier this year. He said that the Committee anticipates bringing these items to the Council/Agency Board as they are completed and not wait for the entire document to be completed for review.

Mayor Pro Tempore Carr noted that it was indicated that this spring a couple of things would be coming together with respect to the downtown and Redevelopment Agency funding. He supported the Committee bringing items to the Council/Redevelopment Agency for review as the items progress.

### **CITY MANAGER REPORT**

City Manager Tewes addressed the following: 1) Consent Calendar Item 5 - a recommendation that the Council award an annual contract for traffic signal and street light maintenance. He said that the traffic signal problem that occurred this afternoon was caused by an electric transformer burning out at Hale and Main Avenues. He indicated that it took 30 minutes for PG&E to reroute the electric power. As a result of this, portions of the downtown and most of the traffic signals along Monterey Road were in need of attention. He stated that this contract is important to the City. 2) Staff will be asking for Council permission to seek the Morgan Hill Unified School District's approval of a possible test water well just north of the football stadium because the City needs to continue to locate additional wells for the City's groundwater supply. Doing so will allow the City to meet the community's growing needs. He said that this area, based on private well information, appears to be a good well site. He informed the Council that staff continues to look for new well sites, and that staff will be asking the School District for their cooperation on this project.

### **CITY ATTORNEY REPORT**

City Attorney Kern reported that the City received a resounding victory in court today on the *Berkman vs. the City of Morgan Hill* case. She indicated that this was a case where a property owner in the City filed a suit against the City over two-years ago that involves a babbling brook in Ms. Berkman's backyard. There were allegations that inverse condemnation had occurred resulting in a public nuisance. This lawsuit went through a lot of briefing, a two week trial, and post trial briefing. She stated that the City received the judge's decision today that found for the City on all counts.

### **OTHER REPORTS**

## **PUBLIC COMMENT**

Mayor/Chairman Tate opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

## ***City Council and Redevelopment Agency Action***

### **ADOPTION OF AGENDA**

**Action:** *Mayor Pro Tempore/Vice-chair Carr made a motion, seconded by Council/Agency Member Grzan, to **adopt** the agenda as printed. The motion carried 4-0 with Council/Agency Member Lee absent*

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Pro Tempore Carr requested that item 2 and Council Member Grzan requested that item 12 be removed from the Consent Calendar.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0 vote with Council Member Lee absent, **Approved** Consent Calendar Items 1, 3-11, and 13-16, as follows:*

1. **NEW LIBRARY PROJECT – JANUARY CONSTRUCTION PROGRESS REPORT**

**Action:** **Information** only.

3. **FRIENDLY INN LEASE AGREEMENT WITH THE YMCA OF SANTA CLARA VALLEY**

**Action:** **Authorized** the City Manager to Execute a Lease Agreement Thru June 30, 2007 with the YMCA of Santa Clara Valley at Friendly Inn; Subject to Review and Approval by the City Attorney.

4. **FIRST AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM**

**Action:** **Authorized** City Manager to Execute a First Amendment to Agreement with the Strombotne Law Firm; Subject to Review and Approval by the City Attorney.

5. **AMENDMENT TO ANNUAL CONTRACT WITH REPUBLIC ELECTRIC FOR TRAFFIC SIGNAL AND STREET LIGHT MAINTENANCE**

**Action:** 1) **Approved** Amendment to Agreement with Republic Electric to Increase the Maximum Compensation from \$130,000 to \$230,000; and 2) **Appropriated** \$10,019 from Current Year Un-appropriated Fire Impact Fund Balance (Fund 313) to the Street Operations Budget (202-6100).

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6. **APPROVAL OF A THREE-YEAR GRANT AGREEMENT WITH SANTA CLARA VALLEY WATER DISTRICT TO ASSIST WITH CITY'S STORM WATER QUALITY PROGRAM**  
*Action:* 1) **Authorized** the City Manager, Subject to Review and Approval by the City Attorney, to Execute a Three-Year Grant Agreement with the Santa Clara Valley Water District to Provide \$45,000 to the City in Support of Storm Water Quality Efforts; and 2) **Appropriated** \$15,000 of Un-Appropriated Community Development Funds (206-5410) to Fund the First Year of the Program (Reimbursable Upon Receipt of Grant Funds).
7. **ACCEPTANCE OF THE INDOOR (CENTENNIAL) RECREATION CENTER PROJECT AND AMENDMENTS TO CONSULTANT AGREEMENTS**  
*Action:* 1) **Accepted** as Complete the Indoor (Centennial) Recreation Center Project in the Final Amount of \$17,341,134 and **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office; 2) **Amended** Consultant Agreements with the Following, Subject to Review and Approval by the City Attorney: a) Nova Partners, Inc. for an Additional Fee not to Exceed \$24,180; b) Biggs Cardosa Associates for an Additional Fee not to Exceed \$12,750; c) Noll & Tam Architects for an Additional Fee not to Exceed \$6,916 and; d) Lewitz and Associates for an Additional Fee not to Exceed \$864; and 3) **Appropriated** \$51,160 from Current Year Unallocated Traffic Impact Fee Fund to the CIP Project Account (#229001) for Offsite (Median) Improvements to West Edmundson Avenue.
8. **AWARD OF PROFESSIONAL SERVICES CONTRACT FOR LIFT STATION C SEWAGE PUMP STATION**  
*Action:* **Authorized** City Manager to Execute a Consultant Agreement for Design and Preparation of Plans, Specifications and Estimates for Modifications to Lift Station C Sewage Pump Station with Freitas + Freitas Engineering, Subject to Review and Approval by the City Attorney.
9. **ACCEPTANCE OF DONATION FOR OFF-LEASH DOG PARK IMPROVEMENTS AT COMMUNITY PARK**  
*Action:* **Accepted** Donation by D.O.G. "Dog Owner's Group" for Off-Leash Dog Park Improvements at Community Park.
10. **AMENDMENT TO ANNUAL AGREEMENT WITH PETERSON POWER SYSTEMS, INC. FOR GENERATOR MAINTENANCE SERVICES**  
*Action:* **Approved** Amendment to the Agreement with Peterson Power Systems, Inc. to Increase the Maximum Compensation from \$44,000 to \$52,000.
11. **PALO ALTO INFORMATION TECHNOLOGY SERVICES CONTRACT AMENDMENT**  
*Action:* **Authorized** City Manager to Execute the Contract Amendment with the City of Palo Alto for the Provision of Expanded Information Technology Support Services; Subject to Review and Approval by the City Attorney.

13. **AUTHORIZATION FOR CITY MANAGER TO REQUEST WELL EASEMENT FROM THE MORGAN HILL UNIFIED SCHOOL DISTRICT ON THE LIVE OAK CAMPUS**  
*Action: Authorized City Manager to Request a Well Easement on the Live Oak High School Campus from the Morgan Hill Unified School District.*
14. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2006 QUARTERLY REPORT #4**  
*Action: Accepted and Filed RDCS Fourth Quarter Report for 2006.*
15. **NEXT STEPS FOR SOUTHEAST QUADRANT (SEQ) PLANNING, INCLUDING AGRICULTURAL MITIGATION POLICIES, GREENBELT FINANCING AND IMPLEMENTATION STRATEGY, SEQ URBAN LIMIT LINE (ULL), AND EXPLORATION OF SPORTS/RECREATION USES IN SEQ**  
*Action: 1) Reviewed and Approved Proposed Work Plan and Process Outline for Developing Agricultural and Open Space Policies and Greenbelt Financing and Implementation Program, Including a Strategy for the SEQ and ULL/Greenbelt; and 2) Authorized the City Manager to Execute the Contract Amendment for \$16,000; Thereby, Approving the Proposed Consultant Scope of Work to Undertake Activities to Further Explore the Strength of the Market and Property Owner Interest in Sports/Recreation Uses in the SEQ; and to Develop Recommendations for Next Steps for SEQ and ULL/Greenbelt Planning, Subject to Review and Approval by the City Attorney.*
16. **GRANADA THEATER**  
*Action: Information only.*
2. **2007 BOARD AND COMMISSION INTERVIEW AND APPOINTMENT SCHEDULE**

Mayor Pro Tempore Carr noted that April 9-13 is spring break for schools, and that this may be a time that he and potential applicants may not be available to participate in an April 11 board and commission interview process.

Mayor Tate offered to work with the City Clerk to identify a couple of alternative dates for Council consideration next week.

*Action: This item was Deferred to the Council's meeting of February 28, 2007.*

## 12. **COURTHOUSE GARDEN DESIGN CONTRACT**

In response to Council Member Grzan's question, Environmental Programs Manager Eulo indicated that native California plants could be incorporated into the Courthouse Garden Design. He stated that the plant pallet and preliminary design would be reviewed by the Utilities & Environment Committee. Therefore, the Committee will have the opportunity to review the plans before going out to bid with the design.

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**Action:** *On a motion by Council Member Grzan and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Lee absent, **Authorized** the City Manager to Execute a Contract with Bellinger Foster Steinmetz not to Exceed \$40,000 for the Design of the Courthouse Water Conservation Demonstration Garden; Subject to Review and Approval by the City Attorney.*

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Agency Member Sellers and seconded by Vice-chair Carr, the Redevelopment Agency Board, on a 4-0 vote with Agency Member Lee absent, **Approved** Consent Calendar Items 17-18, as follows:*

**17. INTERIM ACQUISITION LOAN AND COMMITMENT TO FUND DOWNPAYMENT ASSISTANCE PROGRAM FOR THE MADRONE PLAZA HOUSING PROJECT**

**Action:** *1) **Authorized** Executive Director to do Everything Necessary and Appropriate to Execute and Implement a Loan Agreement with South County Community Builders for an Amount of \$2 Million in CalHFA RDLP funds for the Madrone Plaza Housing Project; and 2) **Preliminarily Committed** to South County Housing an Amount up to \$1.9 Million in Agency 20% Housing Setaside Funds for the Madrone Plaza Housing Project.*

**18. AWARD PURCHASE ORDERS FOR DEMOLITION OF THREE AGENCY OWNED BUILDINGS**

**Action:** *1) In Accordance with Section 3.04.150A of the City Municipal Code, Staff **Recommended** the Agency Determines the Competitive Bid Process for Demolishing the LaMalfa House (Located at the Outdoor Sports Center Site), Acton Farm House (Located at 55 East Fourth Street), and 16545 Murphy Avenue House (Located at the Outdoor Sports Center Site) Would not Likely Result in a Lower Price to the City from a Responsible Bidder and/or Would Cause Unnecessary Expense and or Delay; and 2) **Approved** Three Purchase Orders to Randazzo Enterprises in the Amount of \$10,262 (LaMalfa House), \$7,000 (Acton Farm House), and \$6,350 (16545 Murphy Avenue House), with a 10% Contingency for Each.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Council/Agency Member Sellers and seconded by Mayor Pro Tempore/Vice-chair Carr, the City Council/Agency Board, on a 4-0 vote with Council/Agency Member Lee absent, **Approved** Consent Calendar Item 19, as follows:*

**19. JOINT REGULAR CITY COUNCIL AND REGULAR REDEVELOPMENT AGENCY MEETING MINUTES OF FEBRUARY 7, 2007**

**Action:** **Approved** as Submitted.

## ***City Council Action***

### **PUBLIC HEARINGS:**

**20. ZONING AMENDMENT, ZAA-04-01/DEVELOPMENT AGREEMENT, DAA-04-08: TILTON-GLENROCK – *Ordinance Nos. 1818 and 1819, New Series***

Director of Community Development Molloy Previsich presented the staff report on a request for the approval of an amendment to the precise development plan for the 81-unit (phases 7-10) of the Capriano project located on the east side of Hale Avenue, south of Tilton Avenue, and west of Monterey Road. She informed the Council that the project has been sold to Dividend Homes, and that a new developer is now involved with the project. She indicated that revised house plans and modified schedules are being requested. She informed the Council that at its meeting of January 23, 2007, the Planning Commission unanimously recommended Council approval of the amendment; including the requested exception to loss of building allocations. She informed the Council that in reviewing the staff report, the developer found there may have been a calculation error on page 3 of the zoning amendment ordinance (page 169 of the agenda packet). She indicated that the developer believes the number of moderate units to be provided should be 11 rather than 12. Staff recommends the Council change the number to 11, subject to verification of the number(s) by staff.

Mayor Tate opened the public hearing. Dick Oliver, Dividend Development, informed the Council that he is also representing Mr. Garcia this evening. He stated that he would agree to respond to any questions the Council may have. No further comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0 vote with Council Member Lee absent, **Waived** the Reading in Full of Ordinance No. 1818, New Series (zoning amendment), with the modification of the number of moderate units to be 11 as suggested by staff, subject to staff confirmation of the numbers.*

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council **Introduced** Ordinance No. 1818, New Series by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PRECISE DEVELOPMENT PLAN AMENDMENT FOR PHASES 7, 8, 9 & 10 (81 UNITS) OF THE CAPRIANO/MADRONE CROSSING DEVELOPMENT. THE RESIDENTIAL DEVELOPMENT PLAN COVERS A 68 ACRE SITE LOCATED ON THE WEST SIDE OF MONTEREY ROAD, SOUTH SIDE OF TILTON AVENUE, ON THE EAST SIDE OF HALE AVE. (APNs 764-09-005, 006, 007, 008, 009, 010 & 014) (APPLICATION ZAA-04-01: HALE-GLENROCK BUILDERS), as amended by staff, by the following roll call vote: AYES: Carr, Grzan, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Lee.***

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0 vote with Council Member Lee absent, **Waived** the Reading in Full of Ordinance No. 1819, New Series (Development Agreement).*



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**Action:**      *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council **Introduced** Ordinance No. 1819, New Series by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1725, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR TILTON-GLENROCK, TO ALLOW FOR A 7-MONTH EXCEPTION TO THE LOSS OF BUILDING ALLOCATIONS FOR THE 20 BUILDING ALLOCATIONS GRANTED FOR FY 2006-2007 AND A 3-MONTH EXCEPTION TO THE LOSS OF BUILDING ALLOCATION FOR THE 15 ALLOCATIONS GRANTED FOR FISCAL YEAR 2007-2008 FOR MP-02-03: TILTON-GLENROCK** by the following roll call vote: AYES: Carr, Grzan, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Lee.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **21.      STATUS REPORT REGARDING IMPLEMENTATION OF THE INSTITUTE GOLF COURSE MITIGATION MONITORING AND REPORTING PLAN (MMRP) AND SITE DEVELOPMENT AND GRADING PLAN (SDGP)**

Community Development Director Molloy Previsich presented the staff report; indicating that staff has provided the Council with a detailed staff report from the City's contract consultant, Pacific Municipal Consultant (PMC), hired to provide staffing services, and to oversee the mitigation and monitoring program. Also, attached is the current action plan prepared by the applicant's project team. Further, staff put together a cover memorandum that focused on some of the key work programs, and the status of key efforts of the plan. She informed the Council that the rezoning of the Institute Golf Course site was approved by the Council on August 18, 2004 along with the approval of a certification of a final Environmental Impact Report (EIR) and a mitigation monitoring program.

Ms. Molloy Previsich stated that this project is considered a code compliance project; noting that golf course improvements were nearly completed when it became necessary to stop work and undertake the rezoning, environmental review, and permitting processes. Although the Council has approved a rezoning of the site, the EIR and the mitigation monitoring program, she stated that a design permit needs to be acted upon by the City in order to fully legitimize the golf course improvements. She stated that the mitigation monitoring program addresses measures that should occur, and is somewhat a "prescription" for studies that need to be undertaken; identifying the performance standards that need to be met in the final Golf Course Improvement Plan to be submitted to the City for a design permit. She informed the Council that it has taken the applicant some time to get geared up and hire the appropriate professional team, and go through the various stages of the studies needed to produce the site development and grading plan. At this time, the property owner is in the final stages of the studies, and that the site development and grading plan is to be submitted by April 2007. Submittal by this date will allow staff to schedule a public hearing, and the Council to take action on the design permit for the golf course.

Ms. Molloy Previsich informed the Council that PMC staff, and the applicant's project manager and technical consultants were in attendance to respond to any questions the Council may have. She called the Council's attention to the status of certain on site and offsite habitat mitigation requirements. She indicated that these have been the most challenging requirements. She stated that a site was identified for the offsite mitigation measures that are to occur/purchased by the applicant at the time the EIR was approved by the Council. She informed the Council that the offsite purchase fell through, and that overtime, the applicant's representatives have been searching for appropriate/suitable habitat lands. However, none were available, or identified. Over this past summer, due to the City's involvement in the South County's Habitat Conservation Plan (HCP), staff became aware that the Open Space Authority might be establishing a conservation bank. Staff spoke with the Open Space Authority, the Department of Fish and Wildlife Services, and the applicant about possibilities that might exist for changing the mitigation measure from acquisition of land to payment of a fee. She informed the Council that these discussions led to progress, but have since stalled. She indicated that the applicant has identified some additional lands that might be available that they would like to explore for purchase. There is still no resolution regarding the offsite mitigation lands. She indicated that a couple of weeks ago, Department of Fish & Wildlife Services issued a letter to the applicant, copying the City, recommending that rather than purchasing land, the applicant pay a fee. She noted that the City's mitigation requires the purchase of land. As of the writing of the staff report, staff has not been successful in setting up a meeting with the Department of Fish & Wildlife Services, the applicant and the City. However, staff has had recent communications with the Department of Fish & Wildlife Services, and is currently involved with setting up a meeting in order to work through an approach for on/off site habitat mitigation measures.

Ms. Molloy Previsich noted that the Council has a letter before it from Craig Breon, and that the letter suggests that things continue to take too long with due dates not being met. The letter further suggests the City consider permit revocation or permit modification.

Council Member Grzan read through the matrix and stated that he was inclined to ask staff to go through each item in order to bring the Council up to date on where this project is. He indicated that there are many items and written materials on who has/has not completed items; noting that many of the items listed have not been completed.

Ms. Molloy Previsich informed the Council that the City's consultant prepared one of the matrices that measures mitigations, and compiled the status at six different timeframes. She indicated that she could walk the Council through the status of each of the work products. She said that the SDGP will represent the culmination of all studies prepared. She informed the Council the work prepared by the technical consultants, some prepared in phases, will end up on the Plan. She stated that staff will review the final proposed SDGP, and will make sure that the Plan meets the performance standards, and is responsive to the applicable mitigation measures. Should there be any suggested changes to what was understood from a couple of years ago, or an approach to suggest changes to a mitigation such as the payment of an in lieu fee for habitat rather than purchasing land, she indicated that more than likely the City would need to prepare an EIR addendum. She said that staff would like to make sure that equivalent mitigations are required, and that the project would not be creating new impacts or worsening the impacts. She said that staff will analyze the information submitted; making sure that it is responsive, and document any substitute mitigation measures that may be involved.

Ms. Molloy Previsich informed the Council that it would be receiving the SDGP in April 2007. Should the SDGP be submitted and is found to be consistent with the performance standards with no new/severe impacts, it should be a simple housekeeping document such as in the preparation of an EIR addendum with a staff report that documents the action. It would take staff a month to review the information. She anticipates the Council would review the document in mid-May. She informed the Council that City staff, the applicant and the Department of U.S. Fish and Wildlife Services, and their respective biological consultant/team will need to meet to discuss the fee versus the purchase of offsite land mitigation measure. She indicated that staff is in the process of coordinating a meeting between the parties, and felt that a meeting could occur within the next two weeks. She felt that the project has been moving slower than expected/desired. However, as a complicated code enforcement project, she felt that forward progress continues to be made.

Mayor Tate opened the floor to public comment.

Kevin Robins, representing the applicant, indicated that he is working with the City to try to bring together the draft reports. He informed the Council that he and the consulting team are trying to do everything they can to do what the City is requesting as well as with what the different agencies have requested. He stated that they agree to meet with the Department of U.S. Fish and Wildlife Services, and will attend the meeting, once scheduled.

Craig Breon, representing the Santa Clara Valley Audubon Society, submitted a letter, for the record, requesting the Council revoke or modify the permit. He stated that Brian Schmidt with the Community for Green Foothills wanted to be in attendance this evening, but had a board meeting to attend. He informed the Council that Mr. Schmidt agrees with the content of his letter. He felt that there are lost resources associated with delays. He noted that the MMRP identified deadlines. By his last count, there were 39 mitigation measures, and that the applicant was out of compliance with at least 28 of these; some having a cost associated to them. He noted that the riparian habitat was supposed to be installed 1.5 years ago, and that the community has lost 1.5 years of plant growth; possibly losing another year of plant growth. He said that every year without buffers around the ponds increases the chances that mowing, etc., will kill an endangered species; again, a loss over time. He felt that these items can be accounted for. He recommended the Council ask its consultants to provide an estimate on the amount of time lost on the riparian habitat issue. It may be found that instead of requiring 1.5 acres, the applicant should be planting 2.5+ acres in order to compensate for lost time. The Council could build into the permit a condition that stipulates that if the mitigation measure is not completed by a certain timeframe, there will be an increase in acreage required for the offsite habitat. He felt that adding such a requirement would lead to greater performance, and to the recovery of some of the resources lost.

Mr. Breon recommended the Council not take these documents lightly. He noted that the resolution approved by the Council in August 2004 was a guideline for what might occur sometime in the future, and that it is a legally enforceable document that stipulates what will be done and when it is to be done. He expressed concern that changes are being proposed to mitigation measures (e.g., pond buffers). He also expressed concern with the offsite habitat mitigation measure. He did not believe the applicant would like the idea of paying \$2 million into a fund. He did not know if the applicant has found land. He indicated that there is a CEQA guideline that states that a lead agency remains responsible for mitigation measures until they are completed. He interprets this to mean that the community can hold the Council responsible for making sure the mitigation measures are satisfied.

No further comments were offered.

City Manager Tewes noted that staff has provided the Council with a status report, and that staff is recommending the Council direct the applicant to submit a site development and grading plan application by April 2007. Doing so would allow the City to schedule the required public hearing in order to grant the design permit required by the action taken by the Council in 2004. He informed the Council that this permit has not been issued as it requires the SDGP which must comply with the mitigation measures as have been discussed. He reminded the Council that staff will be meeting with the Department of Fish & Wildlife Services to try and harmonize their approach to the offsite mitigation with the Council's approach adopted in the EIR.

Mayor Pro Tempore Carr inquired whether there were items the Council can state this evening, or recommend proposed changes to the existing permit should the April deadline be missed.

Ms. Molloy Previsich informed the Council that an existing permit does not exist. However, the applicant has City approval of zoning on the property. She said that there is the ability to play golf or not play golf. She noted that the current zoning approval restricts the golf use to half the year.

Mayor Pro Tempore Carr inquired whether the Council could attach any changes/conditions this evening. He stated that he did not want to wait until April to hear the reasons why the applicant could not meet this deadline, and not have the Council be willing to take action. He would like to state that the applicant is to meet the City's conditions, or there will be consequences.

City Attorney Kern said that the City could make it clear that the applicant needs to be in substantial compliance. Should the applicant fail to meet the April submittal date, the City could begin the "Show Cause" process of why the City should not be revoking or modifying their permit.

City Manager Tewes indicated that at the Council's request, staff agendaized the status report this evening. He stated that subsequent actions require proper notice to all parties. He indicated that these types of actions have not been noticed for this evening.

Council Member Grzan expressed concern that a plan will return to the Council in April; however, it may not be a good one. This may result in the need for additional studies and cause further delays. He inquired how the City can require the applicant to return to the Council with a plan that achieves all the mitigation requirements.

Ms. Molloy Previsich said that there was a period of time where City staff and contract staff were in communication with the applicant about better defining what would be considered adequate submittals as several of the submittals were inadequate. She indicated that new professionals have been added to the applicant's team. Staff has been reviewing work products as they are completed. Therefore, staff has seen a number of interim products. She acknowledged Council Member Grzan's concern, but felt that City staff has been clear in defining what will be considered adequate. She informed the Council that staff has reviewed the concepts for the riparian re-vegetation plans, and that staff has communicated clear standards for what the drawings need to look like.

Council Member Grzan said that it would be his expectation that when this item returns to the Council in April, it would be a good Plan and that anything less would be unacceptable.

Ms. Molloy Previsich stated that staff needs a period of time to analyze what is brought forward to the Council. This would be the subject of the public hearing. She informed the Council that the applicant has indicated that a pedestrian bridge will be submitted as part of the SDGP, and that staff will need to review the plans in order to ensure that it fits within the parameters of what has been studied to date. Further, that the pedestrian bridge will not have any impacts that were not already identified. This is the only item that is an unknown. She said that staff will need to see if the applicant indeed proposes a pedestrian bridge, and that it does indeed comport with the analysis or would cause a delay and concern for the overall golf course project.

Council Member Sellers said that he read the document thoroughly as well as the status report. What is apparent throughout the document is that everyone is working hard. He noted that Mr. Breon's letter indicates that everyone is working hard and showing a good faith effort. He stated that everyone has acknowledged this is a complicated and difficult project. He did not believe the City will see another project of this complexity or involvement again. He felt the City is trying to rectify the actions taken 20-40 years ago. He noted that the applicant has taken extra efforts in retaining new staff, and undertaking significant adjustments over the years to comply with some of the requirements. He indicated that the applicant has a group telling them to buy land while another group is asking them to place money into a fund. He stated his support of adopting the two staff recommended action items. He said that if it turns out that a delay was caused by another agency, he would hate to cast blame on the applicant. He felt that the City needs to make it clear that the applicant needs to complete the Plan by April. He indicated that the Council had the opportunity to meet with the newly elected Congressman (Congressman McNerny) who pledged his support in helping the City contact the Department of U.S. Fish & Wildlife Services. He stated that he was excited about the project, and felt that sometimes you get bogged down in the details of where things are going; losing site of the significance of this once in a lifetime project. He thanked staff and everyone else for everything they have done. He agreed that mistakes have been made because this is an incredibly complex/detailed project. However, he did not see any malice on the part of anyone, nor an intent to deceive anyone. He sees an attempt to try and decipher and untangle an incredibly complex process. He encouraged staff to do whatever it can, and to return to the Council if they need assistance. Otherwise, he recommended that staff and the applicant be allowed to get on with their work.

Council Member Grzan stated that he sees the origins of this project of an applicant who took advantage of the City, and did not comply with the rules and regulations that other agencies have to comply with. Had an EIR been adopted before the project was started, he did not believe the City and the applicant would be here today trying to mitigate and correct the situation the applicant created. He felt that there was some ownership on the applicant's part to correct the mistakes made in this process. It was his belief that the applicant should have already complied with many of the mitigation measures. He was pleased that everyone is working together in trying to resolve the situation. However, there comes a time to draw a line such that the project needs to be fixed in order to move forward. He stated that he would be willing to wait until April to fix the situation, but not any longer than that timeframe. He noted that the members of the Audubon Society and Green Foothills have suggested that should the City not see some compliance soon, the City should be adding additional compliance issues for the time and habitat lost in the process; requesting additional mitigation measures should additional delays occur. He stated his concurrence with their recommendation. He was inclined to recommend the City leverage whatever resources it has in order to get the applicant to comply. He expressed concern that even though the Plan

returns to the Council in April, the timeline would be years off to implement. He felt that a timeline needs to be associated with the project. He sees continual delays in this process, and stated that he does not want to be there again. He hears the environmentalist in the community, and agrees with them that the project needs to move forward. He clarified that this is not the City's problem, but the applicant's problem. Therefore, it is up to the applicant to correct the problem, and to correct the problem now.

Mayor Pro Tempore Carr said that he was frustrated in that mitigation measures have been adopted and approved by the City, and now other agencies are suggesting other mitigations measures. Considering alternative mitigations may result in the need to open up the entire process; resulting in a frustration. He noted that there are other significant environmental impacts in the community. He would like to find a way to combine the two efforts; however, the California environmental quality laws do not allow the City to do so. He noted that the Council approved an item on the consent calendar this evening regarding the southeast quadrant. If there was a way the City could use some of the mitigation measures from this project in order to achieve some of the Council's goals for the southeast quadrant, the City would be doing a far better service to the City and the environment that surrounds the City. If the City was able to get the bright minds to put their heads together to figure out the issues, the City would be solving real issues instead of dealing with problems that have occurred in the past; trying to punish someone for past actions instead of looking forward. He stated that he could not stress enough that the City needs to move forward with the mitigations approved by the Council. He informed the applicant that the Council will be expecting the process to be further along with regards to the site development and grading plan in April. He indicated that the City has great frustrations as well in dealing with other Federal and State agencies agreeing with the mitigations the City puts into place. He noted that these agencies are coming out with letters suggesting alternative mitigation measures. He felt the City needs to keep moving the project along in order to get the mitigation measures approved.

Council Member Sellers reiterated that the applicant needs to be pushed along. However, if it is found that the City should have done something more as a City, or that the Federal agency is not acting expeditiously, he does not believe the applicant or the City should be punished. He felt that the City needs to make sure that everyone is working in the same direction. It was his belief the applicant has more reason to move forward quickly than anyone else. He stated that delays need to be avoided on everyone's part. Should staff believe there are delays occurring at some other agency's level, it would be important for the Council to hear about these delays to see if it can assist. He did not want to blame the applicant when the blame lies elsewhere.

**Action:**      *Agency Member Sellers made a motion, seconded by Vice-chair Carr, to: 1) **Direct** the Applicant to Submit the Site Development and Grading Plan (SDGP) by April 2007, and that the Project Return Directly to the City Council, Along with any Required CEQA Document, for the Required Design Permit Public Hearing for Action by the City; and 2) **Request** U.S. Fish and Wildlife Service (USFWS) to Attend a Meeting Prior to April 2007 Between the City, Applicant, and USFWS to Review Current Status of Compliance with Habitat Mitigation Measures.*

Council Member Grzan inquired as to the City's recourse(s) should it be found there is a significant lack of work/effort and the Plan is not where it should be in April (e.g., revocation of the permit).

City Attorney Kern said that instead of returning to the Council with a status report, staff would need to notice a hearing; serving notice on the applicant similar to what is done on a default on a contract. The City would advise the applicant of the nature of the default, and deficiencies. The applicant would come to the noticed public hearing to explain themselves to the Council. Should the applicant fail to explain themselves to the Council's satisfaction, this would be the time the Council would be able to: 1) modify the permit, or 2) revoke the permit. She said that the Council could work something out with the applicant in this process where they might agree to different mitigations, and/or increase mitigation(s). The Council could have a discussion with the applicant, short of revoking the permit, if there is/are some other measure(s) that can be put into place that resolves the issue.

City Manager Tewes indicated that in 2004, the Council approved a zoning request that included conditions of approval. The zoning allows a golf course to be developed on the property subject to certain conditions. As it relates to playing golf, one of the conditions related to the period of time/season golf can be played, and how many rounds per day could be played. From time to time, the City finds that property owners do not comply with certain conditions, and the City seeks to obtain compliance. Should the City not be able to achieve compliance, the City would need to go through an administrative hearing as was suggested by the City Attorney. Pursuant to the zoning approval, the owner was required to pursue a course of action that would lead to the application and subsequent approval of a site development and grading plan. This is the permit staff is suggesting the Council issue upon the review of all the issues in a few months. He indicated that the Council cannot issue the site development and grading plan if it is not consistent with the environmental record. The Council will be the one who decides whether or not the site development and grading plan complies with the mitigation measures. He informed the Council that playing golf was found not to have environmental impacts in the EIR, but that it is the construction and/or maintenance of a golf course that may have an impact on the environment. He said that one could proceed to change the zoning or to adopt a code compliance measures that would not allow golf play or the operation/maintenance of a golf course.

Council Member Grzan inquired whether the City could revoke the zoning and deny the applicant the use of the golf course; requiring the property to return to its natural state.

City Manager Tewes said that he was not sure whether the City would be able to require a property owner to reverse the use. He noted that there are frogs on the site that would be impacted by any action to reverse the course.

Ms. Molloy Previsich indicated that the City would need additional CEQA and environmental review because returning the project to its prior use would be a project in itself, and that the City would need to analyze the impacts of returning the use to the prior use.

Mayor Tate acknowledged that there has been a lot of frustration associated with this project since the beginning. However, he always tries to look forward instead of backwards. He stated that there has been overwhelming support for the American Institute of Mathematics to build a facility on Hill Road; noting that no one spoke against this world class facility. He stated that everything that Council Member Sellers

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stated is correct with regards to the complications associated with other agencies being involved. He felt the City can hold the different players in this process accountable: the applicant, the City, the consultants, and/or outside agencies. It looks as though some members of the teams are working well together. He felt that there would be a good probability the City will receive a submission of the site development and grading plan by April. He stated that he would support staff's recommended action. Even though it has been a bumpy road, he felt the City is on the right road to get to where it wants to be at the end.

**Vote:**            *The motion carried 4-0 with Council Member Lee absent.*

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Tate adjourned the meeting at 8:10 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**